

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE AGREEMENT WITH INVOICE CLOUD, INC., FOR E-BILL PRESENTMENT AND E-PAYMENT OF UTILITY BILLS FOR A THREE-YEAR TERM FROM JULY 1, 2014 TO JUNE 31, 2017 IN THE NOT-TO-EXCEED AMOUNT OF FORTY-EIGHT THOUSAND DOLLARS (\$48,000.00) AND AUTHORIZING THE PURCHASING AGENT TO EXERCISE UP TO THREE (3) ANNUAL RENEWAL OPTIONS, SUBJECT TO APPROPRIATION OF FUNDS AND WITHOUT FURTHER CITY COUNCIL APPROVAL**

**WHEREAS**, on February 3, 2014, the Purchasing Agent issued a Request for Proposal (“RFP”) for E-bill Presentment and E-Payment of Utility Bills; and

**WHEREAS**, five (5) proposals were timely received and evaluated by a committee of three (3) consisting of the Finance Manager, Senior Accountant, and acting Information Services Director, who scored the proposals based on seven (7) criteria including the proposers’ company backgrounds, technical abilities, and references; and

**WHEREAS**, interviews of all five (5) proposers were conducted and Invoice Cloud, Inc., a Delaware corporation registered with the California Secretary of State, was the highest ranked proposer and its proposal is the most advantageous to the City, and

**WHEREAS**, the City’s Purchasing Agent recommends the City Council approve the Agreement between the City of Milpitas and Invoice Cloud, Inc., for the period from July 1, 2014 to June 30, 2017 in the not-to-exceed amount of Forty-Eight Thousand dollars (\$48,000.00); and

**WHEREAS**, the City’s Purchasing Agent is requesting the authority to negotiate and execute up to three (3) annual renewal options in the amount not-to-exceed Sixteen Thousand Dollars (\$16,000.00) per year without further City Council action except appropriation of funds.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. The City Council approves the Agreement with Invoice Cloud, Inc., a Delaware corporation registered with the California Secretary of State, for E-bill Presentment and E-Payment of Utility Bills for the period from July 1, 2014 to June 30, 2017, in the amount not to exceed Forty-Eight Thousand dollars (\$48,000.00), a copy of which is attached hereto as **Exhibit A**.
3. The City Council authorizes the Purchasing Agent to negotiate and execute up to three (3) annual renewal options, subject to appropriation of funds and without further City Council action.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney



## EXHIBIT A to RESOLUTION

### SERVICE for ELECTRONIC BILL PRESENTMENT AND PAYMENT OF UTILITY BILL AGREEMENT BETWEEN THE CITY OF MILPITAS AND INVOICE CLOUD, INC.

THIS AGREEMENT for consulting services is made by and between the City of Milpitas, a municipal corporation of the State of California ("City") and Invoice Cloud, Inc., a corporation of the State of Delaware ("Contractor") as of July 1, 2014 ("Effective Date").

### AGREEMENT

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work of Exhibit A, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2017 ("Initial Term") with 3 one year options to renew through June 30, 2020 ("Optional Term") at City's sole discretion. In the event City elects to exercise the annual option, City will provide written notice to Contractor in the form attached as Exhibit D prior to the expiration of the then applicable Optional Term.

Contractor shall complete all the work described in the Scope of Work prior to that date set forth above, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.

- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices his profession. Contractor shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession.
- 1.3 **Scope of Contractor's Duties and Services.** The scope of Contractor's duties and service is set out in EXHIBIT A, which is attached and incorporated by reference. The duties and services shall be completed according to the time schedule contained in EXHIBIT A.
- 1.4 **Assignment of Personnel.** Contractor shall only assign competent personnel to perform services pursuant to this Agreement. Contractor shall provide the name(s) of the specific personnel who shall be assigned to perform services under this Agreement prior to

commencing any work. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such individual, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such individual.

- 1.5** **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to complete Contractor's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Contractor a maximum price not to exceed **SIXTEEN THOUSAND** Dollars (\$16,000.00) annually for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Contractor shall not bill City for duplicate services performed by more than one person.

Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1** **Invoices.** Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- The Contractor's signature.

- 2.2** **Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Contractor. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Contractor within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

- 2.3** **Total Payment.** City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever

incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service under this Agreement.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Contractor identifies additional work outside the scope of services specified in **Exhibit A** that may be required to complete the work required under this Agreement, Contractor shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 **Fees.** Fees for work performed by Contractor shall not exceed the amounts shown in **Exhibit B**.
- 2.5 **Reimbursable Expenses.** Reimbursable expenses are shown on **Exhibit B**. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Contractor for work not verified by logs or timesheets.
- 2.8 **Authorization to Perform Services.** The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed on a date certain from the City. City may also suspend services under this Agreement for such periods as are necessary to meet its economic needs.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Contractor shall, at his or her sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Contractor shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Contractor's price. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance

required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

- 4.1 Workers' Compensation.** Contractor shall, at its sole cost and expense, maintain Statutory Worker's Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written by certified mail, return receipt requested, has been given to the City.

**4.2 Commercial General and Automobile Liability Insurance.**

- 4.2.1 General requirements.** Contractor, at his or her own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

- 4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

- 4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, contractors, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor; products and completed operations of Contractor; premises owned, occupied, or used by Contractor; and automobiles owned, leased, or used by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, contractors, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, contractors, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of Contractor to comply with reporting provisions of the policy shall not affect coverage provided to City and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

#### **4.3 Requirements for All Policies.**

- 4.3.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.3.2 Verification of coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of all required insurance policies at any time.
- 4.3.3 Subcontractors.** Contractor shall include all subcontractors as insureds under these policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.3.4 Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Contractor may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, contractors, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Contractor procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**4.3.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Contractor shall provide written notice to City at Contractor's earliest possible opportunity and in no case later than five (5) days after Contractor is notified of the change in coverage.

**4.4 Remedies.** In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the timeframe herein required, City may, at its sole option, exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Declare Contractor in material breach of the Agreement and terminate the Agreement.

**4.5 Waiver.** The City Attorney jointly with the Risk Manager (Finance Director) of the City have the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing and included in the Scope of Work attached as Exhibit A.

**Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.** Contractor shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, contractors, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Contractor or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality of character of their work. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of

the City or its officers, employees, agents, contractors, contractors, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF CONTRACTOR.**

**6.1 Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Section 1.3. Otherwise, City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement, (even those not authorized to do so under this personal services Agreement) shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

**6.2 Contractor No Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

## **Section 7. LEGAL REQUIREMENTS.**

**7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

**7.2 Compliance with Applicable Laws.** Contractor shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice his or her respective profession and to perform this Agreement. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.
- 7.5 **Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the provisions of this subsection in any subcontract approved by the City or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Contractor.

In the event of termination, Contractor shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement as provided in Section 1.1. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 **Assignment and Subcontracting.** City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the City. Contractor shall not subcontract any portion of the performance contemplated and provided for herein other than to the subcontractors listed in the Contractor's proposal, without prior written approval of the City.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.
- 8.6 **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:
- 8.6.1 Immediate cancellation of the Agreement;
  - 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor pursuant to this Agreement prior to cancellation; and
  - 8.6.3 Retention of a different contractor at Contractor's cost to complete the work described in Exhibit A not finished by Contractor.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Contractor to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Contractor agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties.

- 9.2 **Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **Liquidated Damages.** When the contractor fails to perform, as specified, the services required in this agreement, the City will have been damaged by that lack of performance. Since it is difficult to define the amount of damage caused, the contractor shall agree to the following liquidated damages. If the contractor fails to perform any contracted service or any part of a contracted service, the City will be damaged. The contractor will be notified by telephone within 24-hours of the failure to perform and performance will be required within 24-hours after receipt of such telephone call. If the contracted service or any part of the contracted service is not performed within the 24-hours of receipt of telephone call, the City will be damaged and liquidated damages of One Thousand dollars (\$1,000.00) per day will be deducted from the monthly invoice until the service is performed to the satisfaction of the City.

- 10.5 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.6 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.7 **Use of Recycled Products.** Contractor shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.8 **Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a “conflict of interest,” as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Contractor warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Contractor were an employee, agent, appointee, or official of the City in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Agreement.. Contractor understands that, if this Agreement is made in violation of Government Code §1090 *et.seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the City for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Contractor certifies that he or she has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Contractor) in connection with procuring this Agreement, nor has Contractor agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

- 10.9 **Solicitation.** Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.10 **Contract Administration.** This Agreement shall be administered by Emma Karlen, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.11 **Notices.** Any written notice to Contractor shall be sent to:

Invoice Cloud, Inc.  
Robert Lapidés  
Executive Vice President  
35 Braintree Hill Office Park, Suite 100  
Braintree, MA 02184

Any written notice to City shall be sent to:

Emma Karlen  
Director of Financial Services  
City of Milpitas  
455 East Calaveras Boulevard  
Milpitas, California 95035

- 10.12 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.13 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.14 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.

CITY OF MILPITAS

CONTRACTOR

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
Robert Lapidés, Executive Vice President  
Invoice Cloud, Inc.

APPROVED AS TO FORM:

\_\_\_\_\_  
Johnny V. Phan, Assistant City Attorney

\_\_\_\_\_  
Taxpayer Identification Number

APPROVED AS TO CONTENT:

\_\_\_\_\_  
City of Milpitas Business License Number

\_\_\_\_\_  
Emma Karlen, Finance Director

## EXHIBIT A

### SCOPE OF WORK AND REQUIREMENTS

**SUMMARY: City of Milpitas is seeking services for secure web based electronic presentment and electronic payment of utility bills that is innovative, customer friendly, efficient and cost effective. The City's objective is to provide its utility customers convenient options to pay utility bills anytime 24/7.**

Contractor shall provide the following services subject to City review and approval:

#### I. System and Software

- A. Contractor shall provide the City a portal accessible through the City's website for the City's utility customers to view and pay their utility bills. It shall be a web based solution hosted by Contractor in compliance with all applicable laws. Utility customers shall be able to pay their utility bills with credit or debit cards from VISA, Mastercard and bank accounts (ACH).
- B. Contractor shall provide the City a mobile application for the City's utility customers to view and pay their utility bills. The mobile application shall work with droids and iPhone operating systems. Utility customers shall be able to pay their utility bills with credit or debit cards from VISA, Mastercard and bank accounts (ACH),
- C. The web based solution and mobile application shall meet all of the following requirements:
  - a. Contractor shall provide the City a secure transmission of billing data. The contractor shall provide secure web and/or sFTP file transfer options for upload of the billing file for processing. Contractor's software shall support Extended Markup Language (XML) file and fixed length text file to accommodate accounts with multiple service locations. Contractor's server shall allow the City to log into and transmit the files as needed. Contractor shall provide the City's ability to view bills online. Contractor shall provide reports via a secure portal which requires username, password and Secured Sockets Layer (SSL) to access.
  - b. Contractor shall immediately send via email to the City a File Confirmation Report – to confirm receipt of file transmission.
  - c. Contractor shall be Payment Card Industry (PCI) Full Compliance, including the Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP). Contractor shall submit annually the Statement on Standards for Attestation Engagement (SSAE) No. 16 (SOC1) Audit. If

SSAE No. 16 is in the process of attaining, the Contractor shall provide a letter saying when the certification will be received. Contractor shall be Federal Trade Commission's Red Flags Rule Compliance.

- d. Contractor shall immediately provide information about its Disaster Recovery policy and Information security.
- e. Contractor shall provide out-of-state Disaster Recovery support. The Contractor shall provide a disaster recovery facility to process the City's bills if the main facility becomes inoperable. Contractor shall provide locations and information about these facilities immediately.
- f. Contractor shall provide necessary security to protect the City's data from unauthorized access. Contractor shall provide procedures for ensuring that only authorized persons are admitted to the production floor.
- g. Contractor shall provide an independent test report stating the application is free from known security defects.
- h. The Contractor shall allow site visits by City personnel anytime to its processing facilities.

## **II. Document Archive**

Contractor shall archive all bill images in Portable Document Format (PDF) files format on the same day the bill files are received. Contractor shall allow City staff to access the archived files via an online interface. Contractor shall store bill images for 24 months.

Contractor acknowledges and understands the City is subject to the California Public Records Act. In the event a member of the public requests a document pursuant to the California Public Records Act within the possession or control of Contractor under this Agreement, Contractor shall immediately provide a copy of such document to the City within twenty-four (24) hours of City request. Contractor is not authorized to release or otherwise disclose any documents or information to any third party without City's written consent.

## **III. Electronic Bill Presentment**

- A. Contractor shall provide an application accessible via a link on the City of Milpitas existing website: <http://www.ci.milpitas.ca.gov>, and all Electronic Bill Presentment and Payment (EBPP) customers must be serviced via hosted application entirely run on the contractor's domain that is secured and PCI Level 1 compliant infrastructure.
- B.. Contractor's EBPP website shall be designed with the City of Milpitas logo and banner image to brand the site for the City customer's familiarity. Contractor shall

be able to list the City of Milpitas contact information, including address and phone number(s) on every page in the footer. Contractor's website shall include the City of Milpitas defined Terms of Service and Privacy Policy. All navigable pages within the application, including those for viewing bills or making payments, shall have a continuity of the look and feel.

- C. City sends bill images to the Contractor. When all bill images are received from the City, the Contractor shall immediately make the images accessible through City's website and/or mobile application for viewing and payment to registered utilities customers to receive their bills over the internet. Contractor shall automatically send an email to the registered customers.
- D. All billing account (payment method) information is confidential: customers' payment information must be secured at all times. Contractor's application shall require a username and password, and utilize SSL security for all customer interaction involving stored payment data.
- E. Contractor's application must provide the ability for customers to self enroll and it must require agreement to a Terms of Service before allowing a user to enroll. Contractor's application, in the interest of transparency and reducing complaints, shall have language that explains the functionality of the portal prior to enrollment, such as which payment methods are available and if paperless is an option.
- F. Contractor's application must guide user on the first login to the portal through an enrollment setup process to assist deciding on preferences and the creation of payment account. These options must be shown and selected by the user before any bills are presented or payments are made.
- G. Contractor's application enrollment process shall require the customer to provide two pieces of information (e.g. account number and service address) in order to validate access. It shall allow user to create a username, password and enter email for correspondence. It shall be capable of providing the user with a default option of paperless in the interface, with the alternate choice to keep paper.
- H. Contractor's application shall allow users to change their password or email at any time. It must be capable of allowing users who have forgotten their passwords to reset and receive a temporary password in the email. Action must not be required by customer service or administration staff to assist in this function.
- I. Contractor's application shall allow user to choose to receive a full bill attachment with the bill notification email, or receive a simple summary of the account, amount due and due date. It must allow users to enroll additional accounts and have them viewable with the existing username, password and email (login information).

- J. Contractor's application shall send a new bill email notice containing the account number, amount due and due date each time a new bill is available for review and payment. It must send a PDF bill along with the bill summary if the user's preference is set for receiving the full bill. Bill notice email must describe the bill type (e.g. regular bill, reminder bill, final bill, etc.) in the subject line and email body. All bill notices will contain a link back to the application login page.
- K. Contractor's application shall provide a link to the bill inserts, so that customers who no longer receive paper bills will have access to the same information.
- L. If a customer is signed up for automatic payments through contractor's application, the new bill email notification must tell the customer that a payment was scheduled.
- M. Contractor's application shall be capable of showing a summary of all accounts belonging to the user upon login, including the total amount due for each account. The user must not be required to click or navigate to see the total amount due for each account that is enrolled to the single username.
- N. Contractor's application shall allow users with multiple accounts to pay with the existing payment account, and not require payment information be re-entered to pay on additional accounts.
- O. Contractor's application shall allow customers to send customer service requests via the portal. These requests must be submitted and stored within the application for reference.

#### **IV. Electronic Bill Payment**

- A. Contractor shall provide a comprehensive solution to ensure that City customers are offered an expanded choice of payment options. The objective is to provide a solution that will accept payments via the Internet, Integrated Voice Response (IVR), and mobile devices (with a mobile formatted webpage).
- B. The Contractor shall provide the following:
  - a. Implement different payment processing options for bill presentment, payment methods, recurring and one time payments, etc..
  - b. A reliable, cost effective payment solution for the City customers.
  - c. Allow the City to offer a mobile phone payment option.
  - d. The ability and resources to provide electronic payment (credit card and one time ACH) processing technology and services. This technology and services will be interfaced to the City systems that provide customers with the ability to pay for services. The technology should also provide settlement with the City's Bank (currently Wells Fargo Bank).

- e. Ability to migrate existing web and IVR payment applications to the new payment platform with minimal impact to customers and the City.
  - f. The ability and resources to design, implement, and support the City's electronic payment applications, including the front end Web pages and the interfaces to the associated business applications.
- C. Contractor's applications shall link to the City's "Utility Payments" button on the City's website to accept various types of payment. The payment platform will allow the City to charge or not charge a convenience fee.
- D. Contractor shall provide an expanded choice of payment processing options for types of credit card accepted, payment method (Web, IVR, Mobile) and web payment integration API (Application Programming Interface).
- E. Contractor shall provide the ability to make payments by phone through the contractor's IVR system. Contractor's IVR application shall support ability to host customer information required for payment processing (account numbers, amounts due, etc.).
- F. Contractor shall provide the ability to accept payments via a mobile device. Contractor's mobile application shall support the ability to brand the application to be consistent with the City's web applications. Contractor's mobile application shall offer fully secure and encrypted payment processing, web payments.
- G. Contractor shall provide a web service/API for processing customer payments from a web application or mobile device. The web service/API shall support several methods to give the City flexibility in developing payment applications.
- H. Contractor's applications shall allow users to create and store multiple payment accounts for use when making payments. Contractor's applications shall process credit card payment with "back-up" credit card (s) or other payment method if initial payment profile fails.
- I. Contractor shall be able to qualify the City for the Utility Rate Program offered by VISA and MasterCard.
- J. Contractor's applications shall allow payment by credit card (VISA or MASTERCARD) and bank accounts (ACH). Contractor shall obtain any agreement, approval, and any permits necessary for all major credit card institutions (VISA and MASTERCARD).
- K. Contractor shall get real-time authorizations for all credit card payments and shall validate ABA routing and transit numbers for ACH payments on real-time.
- L. Contractor's applications shall allow customers to make a one-time payment without creating an account or requiring a user-id/login.

- M. Contractor's shall notify the user with a payment failure email notification if a future payment (ACH or Credit Card) is rejected by the processor for any reason.
- N. Contractor's applications shall provide the user with an option to pay an amount other than the account balance.
- O. Contractor's applications shall provide the user the ability to modify a payment scheduled for initiation on future date.
- P. Contractor's applications shall provide users with on screen reference or confirmation number when a payment is made in the portal. Applications must send users an email confirmation each time a payment is made.
- Q. Contractor's applications shall provide the user with the option to enroll for recurring payments with a stored payment account.
- R. Contractor's applications shall send the user a confirmation of enrollment in the recurring payment program, and log the date and user who performed the enrollment.
- S. Contractor's applications shall be capable of scheduling payments on the user's behalf, after enrollment for recurring payments, whenever a billing file is received.
- T. Contractor's applications shall notify the user via email that an automatic payment was scheduled.
- U. Contractor's applications shall send the user an email if the recurring program is canceled, and log the date, time and user who requested the cancellation.
- V. Contractor's applications shall send an email to users signed up for recurring payments with a credit card that the card is going to expire at the beginning of the expiration month. This email must recommend the user take action to avoid disruption to future automatic payments.
- W. Contractor's applications shall send an email to users signed up for recurring payments with a credit card that the card has expired and automatic payments have been canceled if the user does not provide a new credit card prior to the end of the expiration month.
- X. Contractor's applications shall show up to 24 months of payment history. It must provide the ability to present customer billing statements, billing history, payment history, account information, and process credit card, debit card and one-time ACH and recurring ACH payments.

- Y. Contractor's applications shall be able to provide payment data files that includes user defined data.
- Z. Contractor's payment application shall interfaced to the City's Cayenta Utility Billing System and shall update the customer's account status on real-time. **NOTE: Any upgrade of Contractor's service on Cayenta Utility System and future Cayenta Utility System version upgrade will be maintained at no cost to the City of Milpitas.**
- AA. Contractor shall provide the City a report for all daily payments for accurate posting/reconciliation.
- BB. Contractor shall process all payments received prior to 12:00 a.m. and deposit to the City's account on the same day. A payment file must be transferred to the City by 2:00 p.m. the same day remittances are received and deposited. The contractor shall define prior to the execution of the contract the daily control and reconciliation reports that the City should expect for remittances processed.
- CC. Contractor's applications shall allow for searching all payment transactions processed by the application, including pending payments that have not posted to our Cayenta Utility Billing System. This information must be real time.
- DD. Contractor shall deliver all reports via email, FTP or placed securely within the Customer Service Representative (CSR) portal download.
- EE. Contractor 's applications shall provide a daily report of any returned bank account (ACH) transactions for reversal of transactions in Cayenta Utility Billing System.
- FF. Contractor's applications shall be able to transmit payment details to the bank.
- GG. All components of Contractor's applications (whether provided by you or provided by payment processing sub-contractors) must currently be PCI DSS (Data Security Standard) Level 1 compliant and audited.

**V. Customer Support and Customer Service Interface**

- A. The Contractor shall provide unlimited customer support during the hours of 8:00 am to 5:00 pm, Pacific Time. Provide procedures for after-hours support, list of company holidays and contact points for customer and/or technical service.
- B. Contractor's applications shall supply an interface for customer service staff to administer the application.
- C. Contractor's applications shall be hosted by the vendor, be accessible via web, and require no software be installed on customer service computers.

- D. Contractor's applications shall require a Customer Service Representative (CSR) username and password.
- E. Contractor's applications shall have multiple CSR access levels, including an administrator level which can create and modify other CSR users. It must have a CSR access level that is read-only.
- F. Contractor's applications shall allow CSRs to set their own passwords.
- G. Contractor's applications shall allow CSRs to search for accounts by account number, account first or last name, service address, as well as email address.
- H. Contractor's applications shall allow CSRs to view billing and payment history, up to 24 months.
- I. Contractor's applications shall allow CSRs to view the same PDF bill that was delivered to the customer.
- J. Contractor's applications shall show the Simple Mail Transfer Protocol (SMTP) email tracking for each bill email, listing whether it was delivered with no errors or received an error from the user's mail server and what error code was.
- K. Contractor's applications shall allow CSR to resend a bill email.
- L. Contractor's applications must allow CSRs on behalf and with the consent of the customer:
  - 1. To set up or cancel enrollment in the recurring payments program.
  - 2. To cancel future payments.
  - 3. To change the paperless preference of the customer.
  - 4. To change the email address.
  - 5. To reset the password, sending a temporary password via email that the CSR does not see.
  - 6. To assign additional accounts to an already created user. The user will see these accounts on next login.
  - 7. To initiate payments using the stored payment of a customer.
- M. Contractor's applications shall be able to allow CSR to view the history of all activities of an account.
- N. Contractor's applications shall allow CSRs to be able to block payment types from being used to pay certain accounts. If all payment types are disabled, the user must be blocked from making payments online against the account.
- O. Contractor's applications shall allow CSRs to deactivate a user to prevent login to the application.

- P. Contractor's applications shall allow CSRs to remove payment accounts from a user's login.
- Q. Contractor's applications shall allow CSRs to initiate payments on accounts where no user has enrolled. These payment accounts must be one-time use and not be stored.

**Delivery / Implementation Schedule**

The Contractor shall complete and implement this project on or before July 1, 2014.

	Item	Decryption	Assigned to:	Date Due
<b>1</b>	<b>Contract/Application Processing</b>			
1a	Signed POF & Processing Agreements - Provided to Invoice Cloud	City of Milpitas must also include a voided check or bank letter	City of Milpitas	
1b	City of Milpitas loaded to IC Systems	Data entry to IC CRM and ITR entry as City of Milpitas.	Project Coordinator	
1c	Chase Submitter Model		Project Coordinator	
1d	Sage Non-Submitter	QC Sage paperwork and submit to Sage - Approval turn around averages 1-2 business days	Project Coordinator	
1e	Underwriting Chase/Sage	Monitor Sage/Chase underwriting process for pending items.	Project Coordinator	
1f	Online Bank Direct Product	If OBD submit City of Milpitas to MC RPPS & FISERV	Project Coordinator	
1g	Check 21	If Check 21 Service submit to RP	Project Coordinator	
1h	IVR Service	If IVR Service selected submit IVR paperwork to Selectron	Project Coordinator	
<b>2</b>	<b>Implementation Launch</b>			
2a	Implementation Project - Launch	Coordinate date and time for implementation project kick off call with City of Milpitas.	Project Coordinator & City of Milpitas	
2b	Implementation Launch Meeting/Call	Review of the IC Services selected by City of Milpitas, implementation phases, project team members, project plan and WBS.	Project Coordinator & City of Milpitas	
2c	Project Plan WBS & Project Team Information	Invoice Cloud to provided detailed project plan with WBS, assignments and timelines.	Project Coordinator	

2d	Project Plan - Updates & Assignments	City of Milpitas to review the WBS and assignments to determine which City of Milpitas team member will be assigned to each task.	City of Milpitas	
<b>3 Integration - IT Group</b>				
3a	Review with City of Milpitas settings/parameter options for integration		Integration Coordinator	
3b	Data Transmission Processes	Review methods available and determine best solution for City of Milpitas needs.	Integration Coordinator & City of Milpitas	
3c	Data Transmission - Testing	City of Milpitas to coordinate testing of data transmission processes with IC.	City of Milpitas	
3d	Stratus - Installation & training of Stratus product if applicable to integration.		Integration Coordinator	
3e	Integration Summary - Update integration summary in CRM with City of Milpitas information from setting/parameter review.		Integration Coordinator	
<b>4 IT Integration/Virtual Site build</b>				
4a	Virtual Site	IC will set up and brand virtual site for City of Milpitas customer to make online payments.	Integration Coordinator	
4b	Stratus - Installation & Training	Installation of Status – City of Milpitas will be trained on the functions and processes of using the Stratus tool.	Integration Coordinator	
4c	City of Milpitas Test Data/Invoices	Request test data from Software partner/City of Milpitas	Integration Coordinator	
4d	City of Milpitas Test Data/Invoices	City of Milpitas to Coordinate delivery of data/invoices for testing.	City of Milpitas	
4e	Online Invoice Display - Template	Provide sample invoices to IC for review and template design.	City of Milpitas	
4f	Online Invoice Display - Template Build	IC team to build invoice template to mirror that of the City of Milpitas printed invoices	Invoice Cloud	
4g	Online Invoice Display - Template Approval	City of Milpitas Approval of template design and data elements of invoice.	City of Milpitas	
4h	Online Invoice Display - PDF	If using PDF format for Invoice display, review with City of Milpitas for transmission processes, timing and layout.	Invoice Cloud	

4i	Online Invoice Display - PDF Approval/Processing	City of Milpitas to approve final process for transmission and linking of PDF's to customer invoices.	City of Milpitas	
4j	Integration Summary - IC	IC team to update Integration summary within CRM.	Integration Coordinator	
<b>5</b>	<b>Marketing &amp; Customer Adoption</b>			
5a	Marketing Call/Review	IC to setup call with City of Milpitas to review marketing/adoption kit, tools and resources.	IC Marketing	
5b	Marketing - Adoption Kit	IC to provide City of Milpitas with Adoption Kit & recommendations.	IC Marketing	
5c	Marketing – City of Milpitas Marketing Plan	City of Milpitas to determine which options from the Adoption kit and or new program launch to be utilized.	City of Milpitas	
5d	Marketing Recap	IC provide marketing recap for City of Milpitas and IC teams.	IC Marketing	
<b>6</b>	<b>Training &amp; Testing cycle for City of Milpitas</b>			
6a	City of Milpitas Training - Customer/City of Milpitas Portal	Schedule Training on City of Milpitas & Customer Portal	Project Coordinator & City of Milpitas	
6b	City of Milpitas Training - Customer/City of Milpitas Portal	Provide webex training session to City of Milpitas on the Customer Experience and the City of Milpitas Portal tool/resources	IC Training Group	
6c	Testing - Customer/City of Milpitas Portal	City of Milpitas will be provided with testing parameters, test cards/dda information, and configuration tasks post training. City of Milpitas will need to complete these items.	City of Milpitas	
6d	Testing - Results & Review	IC will schedule time to review testing results with City of Milpitas, determine what revisions/changes will need to be made to assure functionality meets City of Milpitas needs.	Project Coordinator & City of Milpitas	
6e	Testing - Review & Revisions	IC to make requested changes and updates per City of Milpitas request and return results to City of Milpitas for final sign off.	IC Team	
<b>7</b>	<b>Configurations/Final Systems Review</b>			
7a	City of Milpitas Portal - QC	City of Milpitas to review permissions, settings, customization and transmission processes with IC	Project Coordinator & City of Milpitas	

		for sign off.		
7b	Customer Portal - QC	City of Milpitas to review field requirements, registration processes, default setting, customer service phone number/emails listed on site and custom text for final approval.	Project Coordinator & City of Milpitas	
7c	Go Live Authorization	City of Milpitas to sign and return to IC Go Live Authorization.	City of Milpitas	
7d	Go Live - Scheduled	IC will schedule go live date with City of Milpitas and notify IC/Software Partner and City of Milpitas teams of date.	Project Coordinator	
<b>8</b>	<b>Production Release/Go Live</b>			
8a	Invoice Cloud - Test Date	IC to purge all test data and transactions from City of Milpitas & Customer Portal.	IC Team	
8b	City of Milpitas/Customer Portal Live	IC team to bring the City of Milpitas & customer Portals Live in Production Mode.	IC Team	
8c	Invoice Files - Current Invoices	City of Milpitas/Software partner to provide current & historical invoices to IC for customer.	City of Milpitas	
8d	Online Invoice Display - Current Invoices	City of Milpitas/Software Partner or City of Milpitas Vendor to provide PDF's for current invoices (if using PDF format)	City of Milpitas	
8e	Production Review - Balances	IC to review with City of Milpitas total invoices loaded, open balances due, data formats, auto payment schedules, etc. for new invoices loaded.	Project Coordinator	
<b>9</b>	<b>CITY OF MILPITAS Launch - Introduce IC to Customers</b>			
9	Customer Release - Website	City of Milpitas to update website with link to Virtual Site/Customer Portal.		

**EXHIBIT B**

**PRICE SUMMARY**

**Contractor will be paid for each registered account based on the following price schedule:**

<b>Electronic Bill Presentment</b>			
<b>Item</b>	<b>Cost/ Unit of Measure</b>	<b>One Time or Recurring</b>	<b>Note</b>
Set up and implementation of Electronic Bill Presentment and Payment portal and payment configuration	<b>\$ 0.00</b>		
Set up and implementation – Data processing program used to process billing data to create eBills in PDF format	<b>\$ 0.00</b>		
Monthly Maintenance Costs	<b>\$ 0.00</b>		
Custom programming charges per hour	<b>\$ 125.00</b>		Invoice Cloud will perform a standard implementation at no charge..
Other ( <i>pls. explain in column 4</i> )	<b>\$ 0.01</b>	<b>Recurring</b>	Option to pay this fee for each invoice presented or pay \$0.40 for electronic delivery of new invoice for only those invoices where the payer has elected to go paperless
<b>Mobile Application</b>			
Set up and implementation of Mobile Application and payment configurations	<b>\$ 0.00</b>		
Monthly Maintenance Costs	<b>\$ 0.00</b>		
Custom programming charges per hour	<b>\$ 125.00</b>		Invoice Cloud will perform a standard implementation at no charge
<b>InterActive Voice Response</b>			
Set up and implementation of InterActive Voice Response and payment configurations	<b>\$ 0.00</b>		
Monthly Maintenance Costs	<b>\$ 0.00</b>		

<b>Electronic Payment Processing</b>			
EBPP Solution vendor cost - ACH / Bank Account Payment	<b>\$ 0.40</b>		
- Credit Card – VISA	<b>\$ 0.40</b>		
- Credit Card - MasterCard	<b>\$ 0.40</b>		
Processor Cost (If processor is part of vendor response):			
- ACH / Bank Account Payment	<b>\$ 0.00</b>		
- Credit Card - VISA	<b>\$ 0.20</b>		
- Credit Card – MasterCard	<b>\$ 0.20</b>		
Payment Processor Transactional Cost including any flat fees and/or basis points (per transaction and list ACH and Card transactional costs separately)	<b>\$ Interchange, Fees, Dues and Assessments</b>		<b>Varies based on card type used by payer. Invoice Cloud will set up Milpitas on the Utility Rate Program from Visa and Mastercard</b>
Returned ACH	<b>\$ 10.00</b>		
Monthly Account Charges	<b>\$ 50.00</b>		
Gateway Transaction fees	<b>\$ 10.00</b>		

**OPTIONAL**

On Line Bank Direct Check Conversion	<b>\$ 0.25</b>	Recurring	On Line Bank Direct Check Conversion
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## EXHIBIT C

### INSURANCE REQUIREMENTS - GENERAL

#### **Definition:**

For purposes of this contract, the following definition applies: City of Milpitas includes the duly elected or appointed officers, agents, employees and volunteers of the City of Milpitas, individually or collectively.

#### **Insurance Required:**

No work shall be done under this Contract unless there is in effect insurance required by the Contract and under this section, and such insurance has been approved by the City, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all insurance required of the subcontractor has been so obtained and approved. The Contractor shall maintain or cause to be maintained adequate workers' compensation insurance as required under the laws of the State of California, for all labor employed by him or by any subcontractor under him who may come within the protection of such worker's compensation laws of the State of California and shall provide or cause to be provided employer's liability insurance for the benefit of his employees.

#### **Minimum Scope of Insurance: (Check Mark Indicates Required)**

Coverage must be *at least as broad as*:

- (X) Insurance Services Office Commercial General Liability coverage (occurrence Form CG0001).
- (X) Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
- (X) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- ( ) Professional Liability or Errors & Omissions Liability insurance appropriate to the contractor's profession.
- ( ) Architects' and Engineers' coverage is to be endorsed to include contractual liability.

#### **Minimum Limits of Insurance:**

Contractor must maintain limits no less than:

1. **General Liability:** **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit.  
(Including operations, products and completed operations, as applicable.)
2. **Automobile Liability:** **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation Employer's Liability:** Statutory  
**\$1,000,000** each accident  
**\$1,000,000** disease-policy limit  
**\$1,000,000** disease-each employee



require, at any time, complete, certified copies of all required insurance policies, including endorsements evidencing the coverage required by these specifications.

The Certificate with endorsements and notices shall be mailed to: City of Milpitas, Attention: Purchasing, 455 East Calaveras Boulevard, Milpitas California, 95035-5411.

**Subcontractors:**

Contractors must include all sub-contractors as insureds under its policies or furnish separate certificates and endorsements for each sub-contractor. All coverage for sub-contractors are subject to all of the requirements included in these specifications.

**Absence of Insurance:**

If the Contractor allows the insurance to lapse, be cancelled, or be reduced below the limits specified in this article, the Contractor shall cause all work in the Project to cease and any delays or expenses caused due to stopping of work and change of insurance shall be considered Contractor's delay and shall not be considered to increase cost to the City or increase time in which the Project shall be completed.

**Contractor agrees that if it does not keep the aforesaid insurance in full force and effect, City may immediately terminate this Agreement**

**EXHIBIT D**

**NOTICE OF EXERCISE OF OPTION TO EXTEND AGREEMENT**

<b>AGREEMENT TITLE and DATE:</b>	
<b>CONTRACTOR Name and Address:</b>	
<b>DATE OF OPTION:</b>	

*(date the notice is sent must be consistent with the time for exercise set forth in Agreement)*

Pursuant to Section \_\_\_\_\_ of the Agreement referenced above, the City of Milpitas hereby exercises its option to extend the term under the following provisions:

<b>OPTION NO.</b>	
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**NEW OPTION TERM**

Begin date:	
End date:	

**CHANGES IN RATE OF COMPENSATION**

<b>Percentage change in CPI upon which adjustment is based:</b>	
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Pursuant to Section \_\_\_ of the Agreement the Rates of Compensation are hereby adjusted as follows:  
*(use attachment if necessary)*

<b>MAXIMUM COMPENSATION for New Option Term:</b>	
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For the option term exercised by this Notice, City shall pay Contractor an amount not to exceed the amount set forth above for Contractor's services and reimbursable expenses, if any. The undersigned signing on behalf of the City of Milpitas hereby certifies that an unexpended appropriation is available for the term exercised by this Notice, and that funds are available as of the date of this signature.

CITY OF Milpitas a municipal corporation  By _____ Name: Title:
--